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Supreme Court of the United States

October Term, 1995

MARK V. HARKINS, SULLIVAN & LONG, INC., JOSEPH D. LAPOTA, JR., SAMUEL HOOKER, CHARLES HAWKER, CAROLE BLAND, AUDREY HEWITT, ANTHONY HEWITT, JOHN ECKENSTEN, RONALD J. MORAN, LESLEY RANNEY MORAN, TIMOTHY J. MORAN, LEON D. ARDELEAN, JEFFREY J. SIMS, SHEFFIELD WOLK, A.J. BLYTHE, DOROTHY B. NUSSDORF, DAN CHLIPALA, and JAMES HAMBURGER,

Petitioners,

v.

SCATTERED CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Do the securities laws prohibit as "manipulation" market conduct which does not mislead investors by artificially affecting market activity?

2. Can a market maker conducting an arbitrage consisting of selling one security which, by order of a United States Bankruptcy Court, will be canceled, while simultaneously buying the designated replacement security in sufficient quantity to fully hedge the total position be considered an "issuer" of the security sold for purposes of § 12(1) of the Securities Act of 1933, 15 U.S.C. § 77l(1)?

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STATUTORY PROVISIONS INVOLVED

In addition to the statutory provisions cited by Petitioners, this Petition involves the following United States statutes and regulations:

1. 15 U.S.C. § 77b(4)

> (4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or

fractional) who creates fractional interests therein for the purpose of public offering.

2. 15 U.S.C. § 78i(a)(1)

(a) It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange –

(1) For the purpose of creating a false or misleading appearance of activity trading in any security registered on a national securities exchange, or a false or misleading appearance with respect to the market for any such security, . . .

3. 15 U.S.C. § 78j(b)

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange –

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

4. 17 C.F.R. 240.10a-1(c)

(c) No broker or dealer shall, by the use of any facility of a national securities exchange, or

any means or instrumentality of interstate commerce, or of the mails, effect any sell order for a security registered on, or admitted to unlisted trading privileges on, a national securities exchange unless such order is marked either "long" or "short."

5. 17 C.F.R. 240.10a-1(d)

(d) No broker or dealer shall mark any order to sell a security registered on, or admitted to unlisted trading privileges on, a national securities exchange "long" unless (1) the security to be delivered after sale is carried in the account for which the sale is to be effected, or (2) such broker or dealer is informed that the seller owns the security ordered to be sold and, as soon as is possible without undue inconvenience or expense, will deliver the security owned to the account for which the sale is to be effected.

6. 17 C.F.R. 240.10a-1(e)(5)

(e) The Provisions of paragraph (a) and (b) of this section (and of any exchange rule adopted in accordance with paragraph (a) of this section) shall not apply to:

(5) Any sale of a security covered by paragraph (a) of this section (except a sale to a stabilizing bid complying with § 240.10b-7) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter,

(i) Effected at a price equal to or above the last sale, regular way,

reported for such security pursuant to an effective transaction reporting plan; or

(ii) Effected at a price equal to the most recent offer communicated for the security by such registered specialist, registered exchange market maker or third market maker to an exchange or a national securities association ("association") pursuant to § 240.11Ac1-1, if such offer, when communicated, was equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan; *Provided, however,* That any exchange, by rule, may prohibit its registered specialist and registered exchange market makers from availing themselves of the exemption afforded by this paragraph (e)(5) if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors;

7. 17 C.F.R. 240.10a-1(e)(7)

(e) The provisions of paragraph (a) and (b) of this section (and of any exchange rule adopted in accordance with paragraph (a) of this section) shall not apply to:

(7) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided

such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer;

8. 17 C.F.R. 240.10b-5

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(1) To employ any device, scheme, or artifice to defraud,

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

STATEMENT OF THE CASE

Petitioners' Statement of the Case contains misstatements and omissions of fact which have a bearing on the

question of what issues would properly be before the Court if certiorari were granted. For this reason, Respondent submits this supplemental Statement of the Case to assist the Court.

Petitioners do not accurately describe the conversion mechanism by which the old common shares of LTV Corporation (hereinafter, respectively, the "Old Shares" and "LTV") were canceled and replaced with new LTV Series A Warrants (hereinafter, the "Warrants") as set forth in LTV's court-approved plan of reorganization in bankruptcy (hereinafter, together with the publicly distributed "Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code" (hereinafter the "Disclosure Statement") prepared by LTV, the "Plan").[1] Under the terms of the Plan, the Old Shares were to be canceled on or prior to the Effective Date.[2] Plan, § 3.14 at p. 8, Resp. App. at p. 25.

The Plan used a mathematical model called the "Black-Scholes Option Valuation Model" to determine the

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[1] Petitioners did not provide the Court with a copy of the relevant portions of the Disclosure Statement and Plan as confirmed by the bankruptcy court. We have provided the Court with these materials in Respondent's Appendix ("Resp. App.") submitted herewith.

[2] The Plan defines the "Effective Date" as the "second business day – (a) that is at least eleven days after the Confirmation Date; (b) on which no stay of the Confirmation Order with respect to the Joint Plan is in effect; and (c) on which all conditions in Article IX of the Joint Plan have occurred or been waived as provided in the Joint Plan." Plan, Ex. A, "Glossary of Defined Terms" at p. 6, Resp. App. at p. 29. The Plan was confirmed by the bankruptcy court on May 27, 1993. The Effective Date actually occurred on June 28, 1993.

precise number of fractional shares of the new LTV common stock being created by the Plan which each Warrant entitled its holder to purchase. Plan at p. 13, Resp. App. at p. 28. The Plan required the Black-Scholes formula to be applied such that the Warrants would, at all relevant times, have a specific fixed value:

> [The formula is to be applied:] in order to establish a $26.0 million valuation for the Series A Warrants (and a value per Series A Warrant of $3.059) . . .

Id. Because the holders of the Old Shares were entitled to receive approximately 1.08 Warrants for every 100 Old Shares held by them, the value of the Old Shares, assuming only confirmation and effectiveness of the Plan, was at all times approximately 3.3005¢ ($3.059 ÷ 100 x 1.08 = $0.033005). Disclosure Statement at pp. 56-57, Resp. App. at pp. 16-19. LTV clearly disclosed the new value of the Old Shares under the Plan to anyone who read that document:

> All existing publicly traded securities of the Debtors will be extinguished on the Effective Date. The only securities of the consolidated companies to be outstanding following confirmation of the Plans will be New LTV Common Stock, certain derivative equity securities (the Series A Warrants and SARs referred to below), the convertible preferred stock and $100 million of debt to be held by Sumitomo, and certain zero-coupon notes due in 2021 to be issued to the PBGC.
>
> * * *
>
> Holders of old LTV equity securities will receive exclusively Series A Warrants. The estimated

> value of the consideration to be received by the holders of the old LTV common stock would be approximately 3.31¢ per share . . .

Disclosure Statement, Summary, pp. 3, 5, Resp. App. at pp. 9, 14-15.

Petitioners also incorrectly describe Respondent Scattered Corporation's ("Scattered's") sales of Old Shares as short sales, intimating that they were naked short sales creating an unlimited supply of stock overhanging the market. As the Seventh Circuit correctly found, however, Scattered was conducting an arbitrage trading strategy. *Sullivan & Long v. Scattered Corporation*, 47 F.3d 857, 862 (7th Cir. 1995). Scattered purchased sufficient Warrants on the "if, as and when issued" market to cover its sales of Old Shares by later delivering the Warrants in satisfaction of the contracts by which the Old Shares were sold. Petitioners admitted as much when they alleged in their Amended Consolidated Class Complaint ("Am. Compl.") below that Scattered "created . . . a new 'hybrid' convertible security . . . consist[ing] of the sale of old LTV stock and the delivery of LTV warrants. . . . " Am. Compl. ¶¶ 84-85. Petitioners also admitted as much by dropping the breach of contract claim which was Count V of their original (pre-consolidation) complaint. Compl., Count V, *Sullivan & Long et al. v. Scattered Corporation, et al.*, Case Number 93 C 4069, filed July 7, 1993. Petitioners also admit in their Petition that "Scattered was able to evade delivery obligations until the shares had been converted to warrants." Petition ("Pet.") at p. 6. There is no question that the Seventh Circuit correctly found that Scattered's trading strategy was an arbitrage.

Petitioners also incorrectly describe the meaning of the "short-exempt" designation. Pet. at p. 6 n. 3. That designation has nothing whatsoever to do with delivery of shares sold short. The ticket marking requirements are set forth in SEC Rule 10a-1(c) and (d). Marking a ticket "short exempt" is a claim that the sale is subject to one of the exemptions from the normal short sale rule set forth in Rule 10a-1(e). In this case, Scattered's trades were subject to the (e)(5) and (e)(7) exemptions.[3]

There are no special delivery rules enabling anyone who marks a sale as "short exempt" to avoid regular delivery. If delivery is not made by the normal settlement date, the purchaser's broker may "buy-in" the undelivered securities, charging the seller with any losses if the price of the shares has risen in the interim. In fact, a number of Scattered's sales of Old Shares were "bought-in" after the settlement date but before Scattered delivered Warrants to settle those contracts.

Contrary to Petitioners' suggestions, there is no requirement that delivery of shares sold actually be made. Pet. at pp. 6-7. Although delivery is customary, the following observation by the Court below remains correct:

> [T]he plaintiffs do not point us to, and we have not been able on our own to find, a law that

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[3] Article VII, Rule 5 of the Chicago Stock Exchange, cited by Petitioners at page 6, note 3 of the Petition, is entitled "Termination of Rights by Suspension" and has nothing to do with these issues. *See* Chicago Stock Exchange Guide, ¶ 5 at p. 2053 (CCH, Inc. 1995).

> *requires* arbitrageurs or other short sellers to borrow the stock that they are selling short.

Sullivan & Long, supra 47 F.3d at 863. Petitioners cite in their Petition no rule requiring delivery. The "buy-in" procedures described above are the purchaser's sole remedy in the event of non-delivery.

Thus, no one was deceived, as petitioners suggest, by Scattered's alleged marking of trade tickets as short exempt. There was no claim below that anyone who actually wanted delivery of the Old Shares could not have obtained them, without damage arising from non-delivery, simply by buying Scattered in. Moreover, there were no allegations below as to how any purchaser of Old Shares could have been aware of (and thus deceived by) Scattered's alleged ticket marking prior to the time that they made their investment decision. The Seventh Circuit was correct in finding that no one was deceived by the alleged conduct. *Id.* at 864.

REASONS FOR DENYING THE WRIT

I. THE SEVENTH CIRCUIT CORRECTLY APPLIED THIS COURT'S WELL ACCEPTED TEST FOR MANIPULATION, FINDING NONE BECAUSE SCATTERED'S ALLEGED BEHAVIOR DID NOT CREATE OR MAINTAIN ARTIFICIAL PRICES.

As the Seventh Circuit correctly found, the conduct in which Scattered is alleged to have engaged simply does not constitute market manipulation:

> The plaintiffs call what Scattered did "market manipulation," a term that refers to tactics

> by which traders, like monopolists, create artificially high or low prices, prices that do not reflect the underlying conditions of supply and demand. *Ernst & Ernst v. Hochfelder, supra,* 425 U.S. at 199. The only artificial prices, however, were the prices at which LTV stock sold between the confirmation of the plan and the expiration of the old stock. They were artificially high because they greatly exceeded the stock's true value, which was only 3 to 4 cents. Far from launching a balloon, Scattered's short sales punctured a balloon, bringing prices down to earth where they belonged.
>
> The name for what Scattered did is not market manipulation, but arbitrage. Arbitrageurs are traders who identify and eliminate disparities between price and value, or as in this case between today's price and tomorrow's price where the difference cannot be attributed to any prospective change in value.

Sullivan & Long v. Scattered Corp., 47 F.3d 857, 862 (7th Cir. 1995). Thus, Petitioners misconstrue the essential logic of the Seventh Circuit's decision. No "exception" was created for "good" manipulation. The Seventh Circuit, like the District Court before it, correctly applied this Court's well accepted test for manipulation, correctly finding no conduct alleged in any of the complaints filed below which satisfied that standard.[4]

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[4] Thus, contrary to Petitioners' suggestion, this case presents no issue of a conflict between the Circuit Courts of Appeal. The legal tests applied below have all been enunciated by this Court. The writ should be denied because the Seventh Circuit correctly applied these tests to the facts alleged in the complaints dismissed below. Moreover, a careful examination of the

As this Court has held, "manipulation" is "virtually a term of art when used in connection with securities markets." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976). The test for manipulation under the securities laws requires a showing of fraudulent or deceptive conduct. To prove manipulation, the plaintiff must show that the defendant intentionally engaged in conduct "artificially affecting market activity in order to mislead investors." *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462, 477 (1977). No allegation of the complaints below, taken as true, is sufficient to show that Scattered engaged in any fraudulent or deceptive conduct of any nature or that Scattered artificially affected the market for Old Shares for the purpose of misleading investors. Without such linchpin allegations, the holding of the courts below that no manipulation was alleged is correct.

Petitioners suggest replacing this Court's well-accepted deception-based test for manipulation with a more simplistic test which merely requires a showing that the defendant "controlled" the price thereby damaging the plaintiff. *See* Pet. at p. 11 ("All market participants have a right to expect that prices are not being controlled, and therefore, the new exception announced below confounds the expectations of the investing public."). Petitioners' proposed test is unacceptable, however, for several reasons. First, it reaches far beyond the plain

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cases cited by Petitioners as being in conflict with the Seventh Circuit's decision in this case reveals that they also correctly applied the same tests to different factual situations. No reason to grant the Petition arises under such circumstances.

language of the statutes in question. Both §§ 9(a)[5] and 10(b)[6] of the Securities and Exchange Act of 1934, 15 U.S.C. §§ 78i(a) and 78j(b), clearly address only fraudulent or deceptive conduct, not conduct which merely causes a price change. This Court correctly continues to require close adherence to the text of the securities statutes in defining the limits of the conduct covered by them. *See, e.g., Central Bank of Denver v. First Interstate Bank*, ___ U.S. ___, ___, 114 S.Ct. 1439, 1447 (1994).

Petitioners' proposed manipulation test is also unworkable for as long as the efficient market hypothesis continues to be accepted by this Court. In an efficient market, every trade affects or "controls" the market to some degree and for some period of time. *Eckstein v. Balcor Film Investors*, 8 F.3d 1121, 1129 (7th Cir. 1993) ("The price in an open and developed market usually reflects all available information, because the price is an outcome of competition among knowledgeable investors."). The presence of many small buy orders for a stock at a particular bid price will clear out the sellers' offers at that price level and result in an increased bid price (as the buyers attempt to entice more sellers into the market) just as certainly as fewer, larger buy orders at the same bid

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[5] Section 9(a) addresses only conduct engaged in "[f]or the purpose of creating a false or misleading appearance of active trading . . . or a false or misleading appearance with respect to the market for any such security. . . . " 15 U.S.C. § 78i(a)(1).

[6] Section 10(b) addresses only conduct constituting a "manipulative or deceptive device or contrivance" which this Court has held to require a showing of fraudulent conduct. 15 U.S.C. § 78j(b); *Hochfelder, supra*, at 199; *Santa Fe, supra*, at 471-72.

price. Similarly, the absence of even small buy orders at a particular bid price will cause a stock's price support to fail at that level and the price to fall as sellers lower their asking prices in order to attract some buyers. Petitioners' test defining manipulation in terms of price control would literally render every successful trader a "manipulator" and erase any logical or predictable distinction between manipulative and non-manipulative conduct.

Contrary to Petitioners' claim, we suggest that market participants have no reasonable expectation that market prices are not controlled by market professionals. Market participants only have a reasonable expectation that the market has integrity. *Basic, Inc. v. Levinson*, 485 U.S. 224, 246-47 (1988). Put another way, market participants have a reasonable expectation only that the market professionals who control prices have acted honestly and that the resulting prices are not artificially affected by fraud or deceit.

The efficient market hypothesis (and the fraud on the market presumption upon which it is based) expressly relies upon the assumption that market prices are controlled by knowledgeable professional market makers and arbitrageurs. *See, e.g., Basic, Inc., supra*, 485 U.S. at 246 and n. 24 ("Congress expressly relied on the premise that securities markets are affected by information" and "we need only believe that market professionals generally consider most publicly announced material statements about companies, *thereby affecting stock prices.*" (Emphasis supplied)). These market professionals, of which Scattered is one, perform the essential function of forcing, by their trading, the price of stocks to reflect publicly available information. *See, e.g., Cammer v. Bloom*, 711 F.Supp.

1264, 1286-1287 (D.N.J. 1989) (citing the presence of control of a stock's price by market professionals as one indicator of an efficient market: "The existence of market makers and arbitrageurs would ensure completion of the market mechanism; these individuals would react swiftly to company news and reported financial results by buying or selling stock and driving it to a changed price level.").

Petitioners would disable this essential market mechanism, deeming every trade which "controlled" price to be manipulative market "rigging" regardless of whether the trade tended to add or remove artificial inflation or deflation from the price by driving the price towards or away from its underlying value as determined by the long-term forces of supply and demand. *See*, F. Easterbrook, *Monopoly, Manipulation and the Regulation of Futures Markets*, 59 J.Bus. S103, S118 (1986) (defining manipulation as trades which "do not move price more quickly in the direction that reflects long-run conditions of supply and demand."). The result would be utter chaos as market forces became disconnected from economic reality while market professionals (and others who recognized an inefficiency) were forced to stand idle on the sidelines for fear of facing manipulation charges arising from any trade which "controlled" the price (*i.e.*, literally any trade which moved the price against the plaintiff's position and resulted in a profit).

Were Petitioners' test the standard, the markets would truly become the "crooked crap game" previously derided by this Court in *Basic*. *See, Basic, Inc., supra*, 485 U.S. at 247 (quoting *Schlanger v. Four-Phase Systems, Inc.*, 555 F.Supp. 535, 538 (S.D.N.Y. 1982)). While Petitioners

quote this colorful comment in their petition, they fail to understand its true meaning. A "crooked crap game" existed in this case, but it was not Scattered's doing.[7] The "crooked crap game" existed because the public failed to realize that the Old Shares, which were trading in excess of $.30 when the Plan was confirmed on May 26, 1993, would shortly be canceled by operation of law and replaced with Warrants worth just 3.31¢[8] under the terms of the Plan.

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[7] During oral argument below, Chief Judge Posner asked us why the significant disparity existed between the market price and the value as established by the Plan. Although the reason is not evident from the record, we suspect that ill-informed members of the public who had failed to read or understand LTV's complete public disclosures were speculatively purchasing the Old Shares in the mistaken belief that they were purchasing an equity interest in the reorganized LTV Corporation. *See, Sullivan & Long, supra,* 47 F.3d at 860. At the time, the financial press was reporting LTV's pending successful emergence from bankruptcy and the company was running advertisements touting itself as the "New Strength in Steel." We also suspect that the modern trend towards discount stock brokerage (which effectively unbundles the purchase of trading services and investment advice) may have contributed to the number of uninformed investors. These trends are all the more reason why market professionals, like Scattered, must be permitted to act to protect the public by removing market inefficiencies as they arise.

[8] Petitioners' incorrectly fault the Seventh Circuit for accepting this value as fact. No evidentiary proof was required, both because of admissions in Petitioners' Amended Consolidated Class Complaint and because the courts below are entitled to consider the Plan and related public disclosure statements published by LTV. *Compare* Am. Compl. ¶ 21 *with* Pet. at p. 13.

A purchaser of the Old Shares during that time had the reasonable expectation that "the market price reflects as nearly as possible a just price" and that the markets operated "as indices of real value." *Basic, Inc., supra,* 485 U.S. at 246 (quoting *Lipton v. Documation, Inc.,* 734 F.2d 740, 748 (11th Cir. 1984), *cert. denied,* 469 U.S. 1132 (1985)). Clearly, during the time period in question, the market for the Old Shares neither operated as an index of the true value nor reflected a just or fair price for those shares. The uninformed members of the public who were purchasing the Old Shares were suffering immediate losses as a result. Scattered's alleged conduct operated to reduce those losses, not to cause them.[9] As the Seventh Circuit correctly found, Scattered acted to remove the artificial inflation in the price of the Old Shares:

> The effect of trading on an information advantage is to dispel, by penalizing, ignorance and to bring market values into closer, quicker conformity with economic reality. The profit which such trading brings at the expense of less knowledgeable traders provides the incentive for a private, for-profit firm, such as Scattered, to provide this economic service.

Sullivan & Long, supra, 47 F.3d at 860.

The facts of this case poignantly illustrate Justice White's fear of fraud on the market claims brought by a class of investors, who, through their own folly, have

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[9] Whatever Scattered did or failed to do, the Old Shares purchased or owned by everyone would be canceled and replaced with 3.31¢ worth of Warrants on the "Effective Date" defined in the Plan.

placed themselves in harm's way by failing to heed publicly available disclosures of material fact which, if read, would have fully protected them. *See, Basic, Inc., supra,* 485 U.S. at 258-59 (White, J. dissenting). Accepting Petitioners' removal of the fraud-deception requirement from the well-accepted test for manipulation would result in the imposition of liability against Scattered without fault and would truly turn the securities laws into "a scheme of investors insurance." *Id.*, 485 U.S. at 252 (quoting *Shores v. Sklar,* 647 F.2d 462, 469, n. 5 (5th Cir. 1981) (*en banc*), *cert. denied,* 459 U.S. 1102 (1983)). There is no basis in the legislative history of the securities laws or the express wording of the statutes to justify such a result.

The same analysis applies with equal force to Petitioners' § 9(a)(2) claims. There was no false or misleading appearance of trading or of supply or demand in this case. Every trade in which Scattered is alleged to have engaged was a real trade, possessing economic substance. Scattered is alleged to have sold Old Shares prior to their cancellation and to have purchased sufficient Warrants in order to arbitrage its position by being able to subsequently deliver the Warrants in settlement of the trades by which Old Shares were sold. There was nothing "artificial" about such a trading strategy. The public's demand for the Old Shares, albeit misguided, was nevertheless real, not artificial demand.

Nor can Scattered be said to have "artificially" enlarged the supply of Old Shares through its trading activities. The supply of LTV equity securities was irrevocably increased by LTV when it decided, as part of the

Plan, to issue the Warrants to replace the Old Shares.[10] Even if the focus is narrowed to just the Old Share leg of the arbitrage, short selling, as the Seventh Circuit correctly found, of even a single share, increases the supply of shares available to trade. *Sullivan & Long, supra,* 47 F.3d at 863. Accepting Petitioner's argument would effectively outlaw short selling. In passing the 1934 Act, Congress debated the merits of short selling, considering and rejecting an outright ban on the practice. *See* Senate Rep. 1455, 73rd Cong. 2d Sess. at pp. 50, 55 ("Short selling and the employment of stop loss orders have not been abolished by the act"). If that decision is to now be reversed, the argument to do so is better addressed to Congress than to this Court.

Through its alleged conduct, Scattered simply met (not induced) the public's real demand for Old Shares with real sales. The overall result, as found by the Court below, was to bring the market more under the control of

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[10] This case differs markedly from the scheme in the comedy movie "The Producers" in that Scattered is not alleged to have sold more shares than existed in economic reality. *See* Pet. at p. 6. n. 2. At all relevant times, LTV had created a vast supply of Warrants which were used, under the bankruptcy laws, to satisfy not only the claims of the former LTV equity holders, but also the claims of many creditors, as well. Thus, Scattered was able to arbitrage its sales of Old Shares by purchasing sufficient Warrants on the "when issued" market and delivering these Warrants in satisfaction of its contracts when LTV made the Warrants available to all of the former holders of the Old Shares. LTV's issuance of such Warrants was so vast that Scattered was able to sell more Old Shares than had been issued or outstanding while purchasing only a small fraction of the Warrants to cover these sales.

natural forces than it had been or would have continued to be without Scattered's alleged conduct. The result was not manipulation, as that term is defined for purposes of both §§ 10(b) and 9(a)(2).

II. BECAUSE SCATTERED CANNOT BE DEEMED AN "ISSUER" UNDER ANY RATIONAL INTERPRETATION OF THE SECURITIES LAWS, IT CANNOT HAVE VIOLATED SECTION 12(1) OF THE 1933 ACT.

Petitioners' § 12(1) argument is essentially that anyone who increases, by short selling, the supply of registered securities trading on a national securities exchange[11] must register the "new shares" thereby created. The Seventh Circuit properly found this argument to be "quite fantastic." *Sullivan & Long, supra,* 47 F.3d at 865. This Court should accord it no greater attention.

Petitioners' claim that Scattered has become an issuer of the Old Shares[12] by "exercising complete control over

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[11] At all relevant times, the Old Shares were listed and traded on the New York Stock Exchange and the Warrants were traded over the counter on a "when issued" basis.

[12] Petitioners have waived by failing to argue the point below, any claim that Scattered acted as an underwriter or dealer of the Old Shares or as an issuer, underwriter or dealer of the Warrants. *See, e.g., Boeing Co. v. Van Gemert,* 444 U.S. 472, 480 n. 5 (1980) (Refusing to consider an issue not perfected on appeal). The sale and distribution of the Warrants, securities created by a debtor in possession as part of a court approved plan of reorganization in bankruptcy, are exempt from regulation under the 1933 Act, being subject instead to a different regulatory scheme under the Bankruptcy Code. *See* 11 U.S.C.

the supply of that security" simply will not withstand scrutiny. Pet. at 15. LTV Corporation is the obvious issuer of both the Old Shares and the Warrants. LTV owned the business and assets in which the purchasers of those securities obtained an interest, it created both securities, it controlled the rights granted by those instruments to their holders and it offered them for initial sale or distribution. Only LTV, not Scattered, can be considered to be the issuer of these securities.

Generally, the "issuer" is understood to be the person owning the investment vehicle which represents the "common fund" necessary for a security to exist. *See, e.g., Woodward v. Wright*, 266 F.2d 108, 114 (10th Cir. 1959) (After finding fractional interests in oil and gas properties to be "securities" the court reasoned: "To be an 'issuer' of a security . . . the appellees must have been the owners of the oil and gas rights, and they must have created fractional interests therein for the purpose of public offering."). Petitioners rely upon the general definition of "issuer" set forth in § 2(4) of the Securities Act of 1933. 15 U.S.C. § 77b(4) (the "1933 Act"). This language, while broad, is insufficient to render Scattered an "issuer" because Scattered simply traded already issued and registered securities as part of an arbitrage, it did not "issue" or "propose to issue" them. The language of that same section proceeding to define "issuer" with respect to certificates of deposit, voting-trust certificates and the like

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§ 1145. Petitioners have never claimed that Scattered became an "underwriter" as to the Warrants, as defined under § 1145, by participating in a distribution of those securities through its sale of Old Shares. They may not do so now.

actually refutes Petitioners' argument, if the term "issuer" is to be construed consistently with respect to all forms of investment. With regard to an unincorporated investment entity not having a Board of Directors, Congress specifically provided that:

> [T]he term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued. . . .

Id. At all relevant times, LTV had a Board of Directors which exclusively performed all such functions. Scattered never managed, controlled or directed LTV or its business or property in any way.

While Petitioners suggest that persons other than issuers, underwriters or dealers have been found liable for selling unregistered securities, the only such persons who we have found are the "control persons" of the issuers, underwriters and dealers in question. Petitioners cite no cases holding liable someone other than an "issuer," "underwriter" or "dealer" or a "control person" of one. Scattered clearly was not a "control person" of LTV within the meaning of the 1933 Act.

Petitioners' argument is both totally unsupported by statute or case law and inconsistent with established practice. The public trading, regardless of volume, of securities which are already issued, subject to an effective registration statement, are listed and traded on a national securities exchange and are the subject of admittedly adequate and truthful public disclosures has always been

regarded as comprising "exempt transactions" under Section 4 of the 1933 Act. 15 U.S.C. § 77d. ("The provisions of section 5 shall not apply to – (1) transactions by any person other than an issuer, underwriter or dealer."). Although courts have warned of the need to narrowly construe exemptions from registration, the reason for such a construction is to effect the purpose of the 1933 Act:

> [E]xemptions from registration provisions are construed narrowly [citation omitted] in order to further the purpose of the Act: "To provide full and fair disclosure of the character of the securities, . . . and to prevent frauds in the sale thereof. . . . "

Securities and Exchange Commission v. Murphy, 626 F.2d 633, 641 (9th Cir. 1980) (Unlike this case, *Murphy*, like Petitioners' other cases, dealt with the sale of unregistered securities as to which full and fair disclosures of material facts were not available). There is no allegation here that full and fair disclosures as to the character of the Old Shares and the Warrants were not publicly available at all relevant times. The Seventh Circuit correctly found that no one had been deceived by Scattered's alleged conduct. *Sullivan & Long, supra*, 47 F.3d at 864.

As this Court recently held, the 1933 Act creates federal registration and disclosure duties primarily in connection with public offerings. *Gustafson v. Alloyd Co., Inc.*, ___ U.S. ___, ___, 115 S.Ct. 1061, 1068 (1995). Scattered conducted no public offering of either the Old

Shares or the Warrants.[13] It certainly did not create, issue or publicly offer any hybrid stock-warrant security, as Petitioners claim. The bankruptcy court, at the request of LTV, not Scattered, altered the rights of the holders of the Old Shares, created the rights of the holders of the Warrants and set the terms and schedule for the exchange of Warrants for Old Shares. The 1933 Act simply does not reach the short selling which Petitioners are attempting to use to attack.

Petitioners' theory of liability arises from an unduly strained construction of the statutory language which does nothing to further the essential disclosure-based purpose of the 1933 Act. Petitioners are attempting to use this misreading of the 1933 Act as an excuse to outlaw short selling, a step which Congress explicitly refused to take when it passed the 1934 Act. *See* Section I, *supra*. Were Petitioners' argument accepted, all short selling would become impractical because every short sale increases the supply of shares available for trading (thus meeting Petitioners' definition of an issuance of new securities) and only the corporation whose stock is being traded possesses sufficient access to material facts about the company necessary to prepare a complete and correct registration statement and prospectus.[14]

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[13] Indulging Petitioners in their fantasy momentarily, even if Scattered "issued" new Old Shares by selling more of them than existed, a registration statement was in effect and disclosures had been made as to those securities. There was no sale of unregistered securities violating § 5 of the 1933 Act.

[14] Were Petitioners' argument the law, arbitrageurs like Scattered attempting to meet the registration requirement in order to be permitted to reap a profit from returning economic

If short selling is to be declared illegal, then Congress ought to act in the first instance to make law. There is no reason for this Court to strain an attempt to find a prohibition against short selling within the present bounds of the 1933 Act.

CONCLUSION

Respondents respectfully request that the petition for a writ of *certiorari* be denied.

Respectfully submitted,

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efficiency to the market would be likely to make many innocent disclosure errors because they would lack the degree of access to the facts possessed by the corporation whose stock they were selling. In many cases, these arbitrage "issuers" would be able to escape liability for their misinformation by proving "that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission." 15 U.S.C. § 77l(2). Such failed disclosure attempts, however, would serve only to confuse the market, not to assist investors, thus distracting from the purposes of the 1933 Act, which is concerned with providing investors with accurate and complete information, not with controlling arbitrage or short selling. *Gustafson, supra.*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings For a Reorganization Under Chapter 11
CHATEAUGAY CORPORATION, REOMAR, INC., THE LTV CORPORATION, ET AL.,	)	Case Nos 86 B 11270 Through 86 B 11334 Inclusive, 86 B 11402, and 86 B 11464 (BRL)
Debtors.	)	

THE LTV SECOND MODIFIED DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND JOINT PLAN OF REORGANIZATION

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Co-Counsel for the Debtors

February 26, 1993

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February 26, 1993

SECOND MODIFIED DISCLOSURE STATEMENT PURSUANT TO § 1125 OF THE BANKRUPTCY CODE

DISCLOSURE STATEMENT – SUMMARY

The LTV Corporation ("LTV") and sixty-six subsidiaries filed for Chapter 11 protection on July 17, 1986 or thereafter in the United States Bankruptcy Court for the Southern District of New York. With this disclosure statement these companies (the "Debtors") are filing a Joint Plan of Reorganization (constituting four separate Plans of Reorganization and one Plan of Liquidation) intended to bring these cases to a close and to permit the emergence of a strong, viable and competitive steel and energy concern.

History and Changes in the Business

These Chapter 11 cases have been among the longest and most complex bankruptcy proceedings ever filed, largely because of the complexity of the pre-filing corporate and financial structure of LTV, the magnitude of the total asserted claims and the difficult social, political and economic problems presented in resolving the legitimate and often conflicting interests of various creditor groups, governmental bodies, and retirees and employees of the Debtors.

LTV Steel Company, Inc. ("LTV Steel") itself represents the combination of three previously separate integrated steel companies – Jones & Laughlin, Republic and Youngstown Sheet and Tube – which were merged to rationalize their operations. As a result, LTV Steel became obligated with respect to extremely heavy retiree obligations. The struggle to address pension costs, which are

imposed on each of the Debtors as a result of the joint and several obligations under federal pension law, has been dealt with on many fronts, including intense litigation with the Pension Benefit Guaranty Corporation (the "PBGC"). Tentative resolution of these critical matters has been accomplished only after protracted and intense negotiations with the PBGC, creditor committees, other governmental bodies and union representatives.

The length of time required to resolve these complicated issues reflects the complexity of the enormous social and policy issues present in a bankruptcy where claims are asserted in the billions of dollars and the interests of hundreds of thousands of individuals in their diverse stakeholder roles are at issue. However, after years of effort, LTV is confident that it will have the needed participation and support of the essential parties to allow LTV and LTV Steel to move through the 1990's with assurance that a solution of substance and value has been achieved.

The PBGC agreement, execution of which is a condition to the effectiveness of the Joint Plan, is the keystone of LTV's reorganization of its financial obligations. The agreement (the "PBGC Settlement Agreement"), which is expected to be executed shortly, after completion of ancillary agreements, sets forth what LTV and the PBGC believe to be a realistic schedule for meeting LTV Steel's unfunded pension obligations by providing a unique thirty-year amortization schedule; allows LTV the financial flexibility it will need in the crucial first post-reorganization years; contains no requirement for the provision of collateral except in the event of a failure to meet fixed-payment obligations; and reflects concessions by the

PBGC of hundreds of millions of dollars which will both strengthen the pension plans and enhance LTV's viability. The agreement requires that LTV make an initial contribution of at least $850 million in cash and various other assets to the restored pension plans of LTV Steel, together with a portion of annual cash flow after capital expenditures until the pension plans are fully funded. LTV believes that this agreement, together with the restructuring of the other obligations of LTV Steel, will permit LTV Steel, the principal post-reorganization operating company, to be a viable competitive organization.

LTV Steel has been successful in restructuring other employee and retiree liabilities as well. By agreement with the United Steelworkers of America (the "USWA"). LTV Steel has implemented a defined contribution plan for its hourly employees and adopted a managed health care program for hourly employees and retirees. These actions are expected to yield substantial savings in the future while not diminishing the quality of medical services. Managed care programs have already been implemented for salaried employees and, pursuant to an agreement with a salaried retiree committee established by the Bankruptcy Court, will also be implemented with respect to salaried retirees. The post-reorganization union contract also provides for important productivity improvements that, in management's view, will yield substantial savings and position LTV Steel to operate more efficiently in today's increasingly competitive environment.

In addition to restructuring employment costs, LTV Steel has addressed other liabilities as well. For example, LTV Steel has terminated numerous major raw material

supply contracts and negotiated new and revised arrangements producing substantial cost savings and productivity improvements. LTV Steel has used the tenure of its bankruptcy to sell plant, property and equipment not necessary to its future operations and to demolish, clean up and dispose of numerous shutdown facilities. LTV has entered into a tentative global agreement resolving claims of the United States Environmental Protection Agency and expects to enter into parallel agreements with other environmental agencies and to enter into a comprehensive agreement with the Internal Revenue Service which will resolve hundreds of millions of dollars in excise tax claims and a myriad of other tax claims and tax treatment issues. Finally, LTV and LTV Steel have resolved thousands of lawsuits and claims stemming from their pre-confirmation activities and bankruptcy filings.

All of these steps will transform LTV from a company overwhelmed with debt into one with a manageable level of fixed payment obligations and a greatly simplified capital structure. The most significant obligations of the reorganized LTV are to fund the remaining legacy costs of LTV Steel, including pensions (pursuant to the PBGC Settlement Agreement) and retiree medical costs. At the LTV and LTV Steel levels, LTV has eliminated billions of dollars of debt (and balance sheet complexity and inflexibility) represented by the existence of many debt securities. The reorganized LTV will have no additional long-term obligations other than the investment by Sumitomo Metal Industries, Ltd. ("Sumitomo") referred to below and two zero coupon notes to the PBGC. To provide for adequate liquidity, LTV expects to have beginning cash

balances of $200 million and is arranging for the provision of working capital financing in the amount of $400 million (including support for outstanding letters of credit).

Because the national defense budget was shrinking and LTV expected that the defense industry would experience an extended period of consolidation, LTV concluded that the most effective way to maximize the value of its investment in LTV Aerospace and Defense Company and AM General Corporation was through a sale of the assets of these businesses. These sale efforts, with the auction process required by the Bankruptcy Code, resulted in very favorable prices for the assets of both companies.

On the steel business side, LTV Steel has sold its bar business, its Warren plant (other than the related coke producing facility), and its Drainage Products division, and used the breathing room provided by Chapter 11 to substantially improve its core facilities by investing approximately $2 billion in capital improvements. As a result of these substantial improvements, LTV Steel is today the second largest domestic producer of flat rolled steel products and is the largest domestic supplier of such products to the automotive and appliance industries.

Sumitomo has agreed to invest $200 million in LTV, through the purchase of convertible secured debt and convertible preferred stock. The Sumitomo investment will be made pursuant to an agreement (the "Sumitomo Agreement") which is expected to be executed shortly, after completion of ancillary agreements. LTV believes that Sumitomo's investment reflects a confidence in LTV

Steel which is fully warranted by LTV's new strength. LTV believes that this investment and relationship with Sumitomo, which has previously entered into two manufacturing joint ventures with LTV Steel, will provide LTV Steel with an important partner in the global steel market of the 1990's and beyond.

LTV anticipates that the restructuring of its finances and its businesses will provide substantial value to the equity of the new LTV. All of the general unsecured creditors of LTV, LTV Steel and LTV Energy Company will receive their recoveries principally in stock and creditors of LTV Aerospace and AM General will receive their recoveries partially in stock. Therefore, it is in the interests of all unsecured creditors, the future owners of the company, that LTV be strong and financially viable, and LTV's Joint Plan of Reorganization is designed with that objective.

For additional information as to LTV's projected financial performance, see "IV. Projected and Pro Forma Financial Information."

The Proposed Plans of Reorganization

The Plans of Reorganization govern five Groups of debtors, and, as required by the Bankruptcy Code, the creditors of each of the Groups – Parent, Steel, Aerospace, AM General and Energy – have been placed in classes based upon their status as secured, priority or unsecured and as senior or subordinated. A chart setting forth the classifications and the recoveries of each class may be found below in this Summary, under "Estimated Claims

and Recoveries by Class – Table of Estimated Recoveries". Creditors trying to determine where their claims are classified may wish to review the more extended discussion under "II. Plans of Reorganization", and particularly under subdivision "II. D. Summary Description of Classes and Their Treatment". Holders of publicly issued LTV debt securities should also review Exhibit B to the Joint Plan which sets forth the varying amounts of Allowed Claims applicable to the various issues of such debt securities.

In most cases, priority and secured claims will be paid in cash; unsecured claims will be paid in new LTV common stock (the "New LTV Common Stock"), except that at Aerospace and AM General some cash will be provided, and in all cases except Energy additional non-cash consideration will be distributed. Because a number of LTV's creditors, which exceed 125,000 in number, have very small claims, the Plans provide that, unless the holders elect otherwise prior to the Distribution Record Date, where a stock distribution would be less than 100 shares, the stock and related CVRs and Series A Warrants will be sold and the net cash proceeds distributed.

All existing publicly traded securities of the Debtors will be extinguished on the Effective Date. The only securities of the consolidated companies to be outstanding following confirmation of the Plans will be New LTV Common Stock, certain derivative equity securities (the Series A Warrants and SARs referred to below), the convertible preferred stock and $100 million of debt to be issued to Sumitomo, and certain zero-coupon notes due in 2020 to be issued to the PBGC.

LTV's financial advisors have estimated that the value of the New LTV Common Stock will be in the range of $1.1 billion to $1.3 billion. These estimates assume that the New LTV Common Stock is fully distributed and widely traded, that no conversions other than mandatory conversions have taken place and that any remaining negative effects of LTV's having been in bankruptcy have been dissipated. Giving effect to the shares to be issued pursuant to the Joint Plan, LTV estimates that there will be outstanding, by the first anniversary of the Effective Date, between 73 and 76 million shares (assuming conversion of the preferred stock and debt issued to Sumitomo), including the 50 million shares of New LTV Common Stock distributable to creditors. On the basis of these estimates and other relevant factors, LTV estimates that each share will have a value in the range of $15.42 to $19.11. These estimated values are based upon current information, including the LTV five year business plan, and financial market and economic factors as they currently exist. There can be no assurance that the stock will, in fact, trade in this range at the actual time of distribution to creditors or at any time thereafter.

Based upon an estimated value of the New LTV Common Stock of $17.26 per share (the midpoint of the estimated values), the overall recoveries by general unsecured creditors are estimated to be 17.7% for the Parent Group, 20.1% for the Steel Group, 55.8% for the Aerospace Group, 43.4% for the AM General Group, and 15.0% for the Energy Group, as such terms are defined in the Joint Plan. A table of Pro Forma holdings of New LTV Common Stock is set forth below in this Summary.

The Debtor Groups are arranged principally based upon historical operations, and it is a condition to confirmation that cases of affiliated companies within each Group be substantively consolidated. Other conditions for the confirmation or effectiveness of the Plan include approval and execution of the PBGC and IRS settlement agreements; execution of the working capital financing agreement; consummation of the Sumitomo transaction; a level of claims resolution sufficient to permit a substantial initial distribution to creditors upon consummation (with subsequent distributions thereafter); and the availability of $850 million (after giving credit for any amounts contributed to the pension plans during Chapter 11) for the initial cash contribution required by the PBGC Settlement Agreement, as well as the requirement, waivable by LTV, that, on the Effective Date, no member of the LTV Controlled Group shall be subject to the provisions of the Coal Industry Retiree Health Benefit Act of 1992.

In each of the Plans separate classes are provided for claims resolved by global settlement agreements, including the PBGC Agreement; an agreement with a trust created by the PBGC under Section 4049 of ERISA; the EPA and state environmental agreements; and the IRS agreement. In addition, separate classes are created for employee/retiree claims, for claims of recipients of workers' compensation and for partially secured claims of holders of J&L Mortgage debt. Intergroup claims are treated as general unsecured claims. Interests of holders of old LTV equity are treated separately and are to receive warrants for the purchase of New LTV Common Stock.

In order to preserve tax attributes, the Plans provide that the charter for the reorganized LTV will restrict the

ability to accumulate new equity in amounts over 4.5 per cent of outstanding equity (as determined in accordance with applicable tax principles) without the approval of the new Board of Directors, but contains no other trading restrictions. The Plans further provide for a process, developed by agreement with creditors, for choosing the new Board of Directors of LTV.

Each of the Plans provides for reorganization of the Debtor Group and discharge of all prepetition claims, except that the AM General Group, the assets of which have been sold, will be liquidated under Chapter 11. The assets of LTV Aerospace have also been sold but, pursuant to the sale agreement and related order of the Bankruptcy Court, LTV Aerospace must continue to hold preferred stock of the acquiror for a period of about five years after the acquisition, or 1997. The Plans provide that LTV Aerospace will be reorganized under Chapter 11 and merged with one or more of the direct or indirect subsidiaries of LTV (or LTV itself) as designated by LTV and approved by the Bankruptcy Court prior to the Effective Date, thus permitting LTV Aerospace to obtain a discharge under the Bankruptcy Code.

LTV is incorporated under the laws of Delaware, and recently moved its corporate headquarters to Cleveland, Ohio, from Dallas, Texas.

LTV believes that these Plans of Reorganization, with LTV's new business initiatives, represent the best way for LTV's creditors to maximize their recoveries. This has been a long, hard struggle, and any alternative route will inevitably result in years of additional litigation with

uncertain results. The Plans seek to preserve tax attributes by virtue of the allocation of recoveries, and these attributes would be jeopardized by any process other than a consensual confirmation process. In addition, a non-consensual process would jeopardize the Sumitomo investment and other elements of the Plans. In particular, any delay in the confirmation process beyond June 30, 1993 may jeopardize the PBGC, Sumitomo and USWA Agreements, with the result that the Restored Pension Plans could be reterminated. In that event, it may be anticipated that the PBGC would assert joint and several Claims in excess of $3 billion in every case; would assert that each of such Claims is entitled to administrative priority status; and, further, would engage in lengthy litigation to support its contentions. Therefore, LTV believes that creditors and equity securityholders should vote for the Plans.

Estimated Claims and Recoveries by Class

The estimated recoveries in respect of Claims in the event that all Voting Classes accept the Plans, based upon an estimate of the amount of the ultimately Allowed Claims, is summarized in the table on the following page.

The senior unimpaired Claims in each Group (Secured Claims, Priority and Administrative Claims) will receive their recoveries in cash. Certain other Claims are being satisfied through the execution and delivery of special agreements, including the PBGC Settlement Agreement, the IRS Settlement Agreement and the Environmental Settlement Agreement, or the making of special arrangements.

Holders of Allowed Claims in the other Impaired Classes in the Parent and Steel Groups will receive primarily, and in the Energy Group exclusively, shares of New LTV Common Stock.

Holders of Allowed Claims in the Steel Group will also receive Contingent Value Rights issued by the PBGC (or a trust established for such purpose) pursuant to a separate agreement between the PBGC and the Steel Creditors Committee.

Holders of Allowed Impaired Claims in the Parent Group will receive, in addition to shares of New LTV Common Stock, an aggregate of $21 million worth of Series A Warrants to purchase shares of New LTV Common Stock (based on the estimated trading value of the New LTV Common Stock on the six-month anniversary of the Effective Date, using the Black-Scholes Option Valuation Model with a volatility rate of 0.40).

In the Aerospace Group, holders of Allowed Claims in the other Impaired Classes will receive, in addition to shares of New LTV Common Stock, cash and a variety of other assets, including most of the non-cash consideration given by the purchaser of the assets of AM General and certain contingent rights in litigation in which LTV Aerospace is a plaintiff.

In the AM General Group, holders of Allowed Claims in the other Impaired Classes will receive cash in addition to shares of New LTV Common Stock.

Holders of old LTV equity securities will receive exclusively Series A Warrants. The estimated value of the consideration to be received by the holders of the old LTV

common stock would be approximately 3.31¢ per share and by the holders of the Old Preferred Stock approximately 42.99¢ per share of Class A Preferred Stock, approximately 5.73¢ per share of Class B Preferred Stock, approximately 21.49¢ per share of Class C Preferred Stock and approximately 5.38¢ per share of Class D Preferred Stock.

Plan recoveries are discussed in more detail under "II. Plans of Reorganization", and particularly under the subdivision "II.D. Summary Descriptions of Classes and Their Treatment".

Class Description	Description of Distribution Under the Plan
Class 6.60: Section 4049 Claims (Claims against the Parent Group with respect to liability under Section 4049 of Title IV of ERISA).	Claims in Class 6.60 will be satisfied by the execution and delivery of the settlement agreement with the 4049 Trustee and its implementation. This Class is unimpaired.
Class 7.10: Subordinated Unsecured Claims (Claims pursuant to debt issues that are contractually subordinated to the Claims included in Class 4.10, which may include the LTV 11% Subordinated Debentures due 2000; the LTV 7 1/2% Subordinated Debentures due 1993 and 1994; the LTV 1970 7 1/2% Subordinated Debentures due June 1, 1993 and June 1, 1994; the LTV Subordinated Exchangeable Variable Rate Notes Due August 15, 1995; the LTV 8 3/4% Subordinated Springing Reset Notes due June 1, 1998; the LTV 11 1/2% Subordinated Springing Reset Notes due March 15, 1997; the LTV 7 7/8% Subordinated Springing Reset Notes due April 1, 1998; the LTV 6 3/4% Subordinated Debentures due	Each holder of an Allowed Class 7.10 Claim will receive from or on behalf of the Debtors stock certificates evidencing such holder's Pro Rata share of the number of shares of New LTV Common Stock allocable to Class 7.10 in accordance with the "Distribution Provisions" described above, and such holder's Pro Rata share of the other Available Resources so allocable to such Class. It is estimated that each holder will receive 1.99 Series A Warrants and 4.77 shares of New LTV Common Stock per $1,000 of Allowed Claim. Exhibit B to the Joint Plan gives information as to the Allowed Claims under various public debt instruments. This Class is impaired.

April 1, 1994; the LTV 5% Subordinated Debentures due January 15, 1988; the LTV 6 1/2% Subordinated Debentures due September 15, 1988; and the LTV 11% Subordinated Debentures due July 15, 2007; and 11% Subordinated Debentures due July 15, 2007; and the Guaranties by LTV of the LTV International, N.V., 5% Guaranteed (Subordinated)Debentures due 1988, the LTV International, N.V., 10 1/4% Convertible Registered Notes due November 1, 1995 and the LTV International, N.V., 10 1/4% Convertible Bearer Notes due November 1, 1996).

Class 9.10: Old Preferred Stock Interests (approximately 7.2 million shares, including 205,500 shares of Series A Preferred Stock, 5,144,400 shares of Series B Preferred Stock, 289,400 shares of Series C Preferred Stock and 1,528,200 shares of Series D Preferred Stock).

Each holder of an Allowed Class 9.10 Interest will receive a certificate evidencing such holder's Pro Rata share of Series A Warrants valued at $527,500, representing approximately 14.05 Warrants (valued at approximately $42.99) per 100 shares of Series A Preferred Stock, approximately 1.87 Warrants (valued at approximately $5.73) per 100 shares of Series B Preferred Stock, approximately

	7.03 Warrants (valued at approximately $21.49) per 100 shares of Series C Preferred Stock and approximately 1.76 Warrants (valued at approximately $5.38) per 100 shares of Series D Preferred Stock. Distribution will be made on or about the Effective Date. This Class is impaired.
Class 10.10: Old Common Stock Interests (approximately 121.6 million shares), and any Claims for damages resulting from the prepetition purchase or sale of any securities issued by LTV ("Security Damage Claim").	The Equity Series A Warrants allocated to this Class (valued at $4,472,500) will be divided between Old Common Stock Interests and Damage Claimants in a ratio of 90% to 10% Each holder of an Old Common Stock Interest will receive a warrant certificate evidencing such holder's Pro Rata share of 90% of the Series A Warrants (valued at $4,025,250, representing approximately 1.08 Warrants (valued at approximately $3.31) per 100 shares of Old Common Stock) and each of the holders of Security Damage Claims will receive a certificate evidencing such holders Pro Rata share of 10% of the Series A Warrants (valued at $447,250),

	or the cash equivalent thereof after the sale by the Securities Claim Settlement Administrator. Distribution will be made on or about the Effective Date. This Class is impaired.
The Steel Group –	
Class 1.20: Secured Claims (fully secured Claims, including post-Filing Date interest to the Effective Date, and the secured portion of the partially secured Claims, without post-Filing Date interest. The fully secured Claims may include Claims offset by receivables (to the extent so offset); Claims secured by mechanics', possessory and other statutory or judicial liens; Claims secured by proceeds of Court-ordered sales of certain assets; the LTV Steel Mining Company 11 3/4% Term Note due August 15, 1986; the LTV Steel Mining Company Variable Rate Term Note due February 1, 1989; the LTV Steel Mining Company Variable Rate Term Note due February 1, 1993; the Youngstown Sheet and	Each holder of an Allowed Class 1.20 Claim will receive payment (a) in full in cash on or about the Effective Date, or the Debtors under this Plan will take other actions so that the Allowed Claim will not be impaired, or (b) as may be agreed upon by the holder of such Allowed Claim and such Debtors. Exhibit B to the Joint Plan gives information as to the Allowed Claims under various public debt instruments. This Class is unimpaired.

Tube Company First Mortgage Sinking Fund 4 1/2% Bonds, Series H, due October 1, 1990; the Youngstown Sheet and Tube Company First Mortgage Sinking Fund 4.60% Bonds, Series 1, due 1995; the Youngstown Sheet and Tube Company First Mortgage Sinking Fund 10 1/2% Bonds, Series J, due 2000; the Youngstown Sheet and Tube Company First Mortgage Sinking Fund 9 7/8% Bonds, Series K, due 1991; the Youngstown Sheet and Tube Company First Mortgage Sinking Fund 6 1/2% Bonds, Pollution Control Series A, due October 1, 1998 (and Related Debt – Ohio Air Quality Environmental Improvement Revenue Bonds, Series A); the Youngstown Sheet and Tube Company First Mortgage Sinking Fund 6 1/2% Bonds, Pollution Control Series B, due October 1, 1998 (and Related Debt – Ohio Water Development Authority Environmental Improvement Revenue Bonds, Series A); the Youngstown Sheet and

Tube Company First Mortgage Sinking Fund 6 ½% Bonds, Pollution Control Series C, due October 1, 1998 (and Related Debt – City of East Chicago Environmental Improvement Revenue Bonds, Series A); the Youngstown Sheet and Tube Company First Mortgage Sinking Fund Bonds, Pollution Control Series D, due June 1, 2005 (and Related Debt – Ohio Air Quality Environmental Improvement Revenue Bonds, Series B); the Youngstown Sheet and Tube Company First Mortgage Sinking Fund Bonds.

EXHIBIT 1

THE LTV SECOND MODIFIED JOINT PLAN OF REORGANIZATION

The Debtors in the above-captioned proceedings propose the following modified Joint Plan of Reorganization:

ARTICLE I

DEFINITIONS

All capitalized terms used herein and not otherwise defined have the meanings assigned to them in Exhibit A annexed hereto and made a part hereof, unless the context clearly requires otherwise. As used in this Plan, all other terms defined in the Code shall have the meanings assigned to them in the Code, unless the context clearly requires otherwise. For the purposes of this Plan, there are five groups of Debtors ("Debtor Groups"): the "Parent Group", consisting of The LTV Corporation, Kentron Saudi Arabia, Inc., LSC Leasing, Inc., The LTV Corporation (Wyoming), LTV International, N.V., LTV Sales Finance Company, LTVUS, Corp. and LTV Education Systems, Inc.; the "Steel Group", consisting of LTV Steel Company, Inc., BCNR Mining Corporation, Bardale Coal Company, Barrel Corporation of West Virginia, Chateaugay Corporation, Crystalane, Inc., Crystalee Coal Company, Dearborn Leasing Company, Erie B Corporation, Erie Development Company, Erie I Corporation, LTV Steel Mining Co, (formerly Erie Mining Company), Georgia Tubing Corporation, Gulf States Steel Corporation, J.W. Storage Company of Ohio, Jalcite I, Inc., Jalcite II, Inc., Jalore Mining Company, Ltd., Jones & Laughlin

Environmental Properties, Inc., Jones & Laughlin Mining Company, Ltd., Jones & Laughlin Ore Mining Company, LTV Electro-Galvanizing, Inc., LTV Holdings, Inc., LTV Leasing, Inc., LTV Steel Tubular Products Company, Lorain Pellet Terminal Co., Lykes Equipment Corporation, Lykes Leasing Corporation, Nemacolin Mines Corporation, Reomar, Inc., RepSteel Overseas Finance N.V., Republic Buildings Corporation, Republic Drainage Products Company, Republic Technology Corporation, Republic-Reserve, Inc., Tuscaloosa Energy Corporation, YST Erie Corporation and Youngstown Erie Corporation; the "Aerospace Group", consisting of LTV Aerospace and Defense Company, National Telephone Systems, Inc., Sierra Information Systems Corp., Sierra Research International Corp., Universal Time/Frequency, Inc., LTV Industries, Inc. (formerly Vought Industries, Inc.), LTV Multinational, Inc. (formerly Vought International, Inc.) and Vought Overseas, Ltd.; the "AM General Group", consisting of LTV Vehicle Corporation (formerly AM General Corporation). Amland Corporation and Vought Properties, Inc.; and the "Energy Group", consisting of LTV Energy Products Company, Continental Emsco Company, FC Divestiture Corporation, Halcorp, Inc., J.K. Industries, Inc., Juddcorp, Inc., LTV Properties, Inc., Oil States Offshore Marine, Inc., Oil States Rubber Co. and Technical Plastics, Inc.

ARTICLE II

Classification of Claims and Interests

For purposes of this Plan, Claims and Interests are classified as follows:

2.1 *Class 1.10 Claims.* Class 1.10 Claims shall consist of fully secured Claims against the Parent Group, including post-Filing Date interest to the Effective Date to the extent allowable under Section 506(b) of the Code (without any interest attributable to default or penalty rates, which shall be deemed cancelled, unenforceable and discharged), and the secured portion of partially secured Claims against the Parent Group, without post-Filing Date interest. The Class 1.10 Claims include the secured portion, if any, of the guaranty by LTV of the obligations of LTV Aerospace under the LTV Aerospace Term Loan Agreement.

* * *

their implementation; provided, that, if no Environmental Settlement Agreement has been entered into on or prior to the Effective Date with respect to any such Claim, such Claim shall constitute a Class 5.10, 5.20, 5.32, 5,40 or 5.50 Claim, as the case may be, and each holder of an Allowed Claim in such Class shall be entitled to a distribution equivalent to that provided for Allowed Claims with respect to such Class.

3.11 *Class 6.60, 6.70, 6.80, 6.90 and 6.95 Claims are not impaired.* Claims in Classes 6.60, 6.70, 6.80, 6.90 and 6.95 will be settled by the execution and delivery of the settlement agreement with the Section 4049 Trustee and its implementation.

3.12 *Class 7.10, 7.20, 7.30 and 8.20 Claims are impaired.* Upon satisfaction of the conditions set forth in paragraph 7.3 hereof and, to the extent applicable, in paragraph 7.4 hereof, each holder of an Allowed Class 7.10, 7.20, 7.30 or 8.20 Claim will be entitled to receive

certificates evidencing such holder's Pro Rata share of the number of shares of New LTV Common Stock allocable to Class 7.10, 7.20, 7.30 or 8.20, as the case may be, in accordance with Article IV hereof, and such holder's Pro Rata share of the other Available Resources so allocable to such Class in accordance with Article IV hereof.

3.13 *Class 9.10 Interests are impaired.* Upon satisfaction of the conditions set forth in paragraph 7.2 hereof, the Old LTV Preferred Stock will be cancelled and, upon surrendering his or her shares, each holder thereof as of the Distribution Record Date will be entitled to receive on the Effective Date, or as soon thereafter as practicable, a certificate evidencing such holder's Pro Rata share of 10.55% of the Equity Series A Warrants.

3.14 *Class 10.10 Interests are impaired.* The Equity Series A Warrants allocated to this Class will be divided between Old Common Stock Interests and holders of Security Damage Claims in a ratio of 90% to 10%. Upon satisfaction of the conditions set forth in paragraph 7.2 hereof, the Old Common Stock will be cancelled and, upon surrendering his or her shares, each holder thereof as of the Distribution Record Date will be entitled to receive on the Effective Date, or as soon thereafter as practicable, a certificate evidencing such holder's respective Pro Rata share of 90% of 89.45% of the Equity Series A Warrants, and each of the holders of Security Damage Claims will be entitled to receive from the Securities Claim Settlement Administrator either a certificate evidencing such holder's respective Pro Rata share of 10% of 89.45% of the Equity Series A Warrants, or the cash equivalent thereof after sale of such 10% of 89.45% of the

Equity Series A Warrants by the Securities Claim Settlement Administrator.

3.15 *Class 10.30 Interests are not impaired.* The Interests of the holders of the capital stock of the Debtors in the Steel Group (other than the LTV Steel Preferred Stock issued pursuant to LTV Steel's Employee Investment Program) will not be affected by this Plan but will remain outstanding with no change in the ownership or characteristics thereof.

3.16 *Class 10.40 Interests are impaired.* All shares of the LTV Steel Preferred Stock issued pursuant to its Employee Investment Program will be converted into shares of New LTV Common Stock at a ratio based on the value of the LTV Steel Preferred Stock, as determined in accordance with applicable law prior to the Effective Date.

3.17 *Class 10.50 and 10.70 Interests are not impaired.* The Interests of the holders of the capital stock of the Debtors in the Aerospace Group and the Energy Group will not be affected by this Plan but will remain outstanding with no change in the ownership or characteristics thereof.

3.18 *Class 10.60 Interests are impaired.* The Interests of the holders of the capital stock of the Debtors in the AM General Group will be cancelled as of the Effective Date; provided, that, from and after the Effective Date, the Debtors in the AM General Group shall continue in existence for the limited purposes of (i) winding up their affairs; (ii) making the distribution provided for in this Plan; and (iii) liquidating or abandoning any remaining assets.

"Residual Cash" means an amount of cash or cash equivalents equal to the sum of (A) at least $450 million of the Aerospace-AM General Sale Net Proceeds, (B) the Sumitomo Proceeds and (C) the total amount of cash or cash equivalents shown on the Consolidated Balance Sheet as of the last day of the calendar month immediately preceding the Effective Date, reduced by the sum of (i) $200 million, (ii) the Initially Required Cash, including any cash payable with respect to the secured portion of Class 1.27 Claims, (iii) the Additional Required Cash, (iv) the Cash Equivalent to Tax Refund, to the extent shown on such Consolidated Balance Sheet, (v) the Gadsden Note Proceeds, to the extent shown on such Consolidated Balance Sheet, (vi) any Warrent Trust Funds or Bar Trust Funds, to the extent received prior to the last day of such calendar month and shown on such Consolidated Balance Sheet, (vii) the Bar Note and Warrant Funds, to the extent received prior to the last day of such calendar month and shown on such Consolidated Balance Sheet, (viii) any of the Antitrust Litigation Proceeds to the extent received prior to the last day of such calendar month and shown on such Consolidated Balance Sheet, and (ix) any of the Aerospace-AM General Sale Net Proceeds, Sumitomo Proceeds or PBGC Stock Purchase Proceeds, to the extent received prior to the last day of such calendar month and shown on such Consolidated Balance Sheet:

"SARs" means Stock Appreciation Rights issued by LTV pursuant to the PBGC Settlement Agreement entitling the PBGC to receive, on the first anniversary of the Effective Date, shares of the New LTV Common Stock having a market value on such anniversary (calculated as

the average of the reported closing market prices on the New York Stock Exchange, or if the New LTV Common Stock is not listed on such Exchange, in such other manner as shall be agreed to by LTV and the PBGC, on the twenty trading days immediately preceding such anniversary) equal to the amount by which the aggregate market value on such anniversary of the Covered Shares exceeds the aggregate value, on a fully distributed basis, of the Covered Shares on the Effective Date, as determined pursuant to the PBGC Settlement Agreement;

"Series A Warrants" means 8,500.00 Series A Warrants to purchase shares of New LTV Common Stock, each of which will expire on the fifth anniversary of the Effective Date, will have an exercise price based on 110% of the average of the closing prices of the New LTV Common Stock for the thirty trading days immediately preceding the six-month anniversary of the Effective Date and will be exercisable for a fractional share of New LTV Common Stock determined by applying the Black-Scholes Option Valuation Model on the six-month anniversary of the Effective Date, using a volatility of 0.40, in order to establish a $26.0 million valuation for the Series A Warrants (and a value per Series A Warrant of $3.059); Series A Warrants having a value of $21 million shall constitute "Creditor Series A Warrants" and Series A Warrants having a value of $5 million shall constitute "Equity Series A Warrants";

"Special Aerospace Assets" means the Ren Obligations, the McDonnell Cause of Action, and rights to receive the Initial Thomson Litigation Proceeds and the beneficial interest in the Ren Stock, and any proceeds from any of the foregoing:

"Special Aerospace Cash" means $52 million;

"Special AM General Cash" means $2.6 million;

"Special IRS Cash" means $3.5 million;

"Sumitomo Proceeds" means the proceeds received from Sumitomo Metal Industries, Ltd., pursuant to the Sumitomo Agreement, net of any portion thereof required to pay expenses under such Agreement or to defray other costs incidental to such receipt; and

"Warren Trust Funds" means any net funds received by any Debtor or the designee of any Debtor from the liquidation of or other realization on the Warren Trusts (it being understood that refunds previously received from annual revaluations of the initial deposit thereunder shall not constitute realization on the Warren Trusts); and "Warren Trusts" means the trust established pursuant to the Salaried Security Enhancement Trust Agreement dated November 2, 1990 by and between LTV Steel and Bank One Trust

* * *

Effective Date means the second business day –

(a) that is at least eleven days after the Confirmation Date;

(b) on which no stay of the Confirmation Order with respect to the Joint Plan is in effect; and

(c) on which all conditions in Article IX of the Joint Plan have occurred or been waived as provided in the Joint Plan.

EIP Trust Shares has the meaning given that expression in paragraph 4.1A of the Joint Plan.

Employee means, with respect to any Debtor Group, an employee of one of the Debtors in such Debtor Group.

Energy Group has the meaning given that expression in Article I of the Joint Plan.

Environmental Settlement Agreements has the meaning given that expression in paragraph 4.1A of the Joint Plan.

EPA has the meaning given that expression in paragraph 2.23 of the Joint Plan.

Equity Series A Warrants has the meaning given that expression in paragraph 4.1A of the Joint Plan.

Equity Committee means the "Official Committee of Equity Security Holders of the LTV Corporation, *et al.*" consisting of those Persons appointed in the Cases by orders of the United States Trustee for the Southern District of New York, as amended from time to time.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Evaluated Disputed Claims has the meaning given that expression in paragraph 4.1A of the Joint Plan.

Excess Bar Trust Funds has the meaning given that expression in paragraph 4.1A of the Joint Plan.

Filing Date means July 17, 1986.

Final Order means (a) a judgment, order, ruling or other decree issued and entered by the Court or by any state or other federal court or other tribunal located in

one of the states, territories or possessions of the United States or the District of Columbia, which judgment, order or other decree (x) has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal or petition for review, rehearing or certiorari is pending or (y) with respect to which any appeal has been finally decided and no further appeal or petition for certiorari can be taken or granted; or (b) a stipulation or other agreement entered into which has the effect of any such judgment, order or other decree.

Former Employee means, with respect to any Debtor Group, a person who was formerly an Employee of one of the Debtors in such Debtor Group.

4049 Trustee means the Trustee appointed by the PBGC pursuant to section 4049 of ERISA.

Further Distributions has the meaning given that expression in paragraph 4.2D of the Joint Plan.

Further Subordination Amount has the meaning given that expression in paragraph 4.2D of the Joint Plan.

Gadsden Note Proceeds has the meaning given that expression in paragraph 4.1A of the Joint Plan.

Guaranties has the meaning given that expression in paragraph 13.5 of the Joint Plan.